

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 3143 OF 1986.

Indian Overseas Bank,
A body corporate constituted and
established under the Banking
Companies (Acquisition and Transfer
of Undertakings) Act, 1970, having
its head office at 762, Anna Salai
Madras in the State of Tamilnadu and
also among others, a branch office
at Plot No.4, Revised Schedule No.3,
Anex Nataraj Cinema, 1st Road,
Chembur, Mumbai 400 071.

... Plaintiff.

Versus.

1. Narinder Singh Dhanoa,
residing at 14/117, Acharya
Commercial Centre, Chembur,
Bombay 400 071.
2. M.N. Sankaran,
residing at 4/421, Delite House,
S.D.Sandhu Marg, Chemhur,
Bombay 400 071.
3. Kushal Singh,
residing at 129/2367, Vikhroli,
Tagore Nagar, Bombay 400 083.

... Defendants

Shri P.N.Singh i/by M/s.Vyas and Bhalwal for the
Plaintiff.

None for the Defendants.

CORAM : ABHAY S.OKA, J.

DATED : 27th August, 2007.

ORAL JUDGMENT.:

1. The Plaintiff-Bank has filed this suit for
recovery of a sum of Rs.1,46,171.89 with further
interests at the rate of 11.85% per annum. The

Plaintiff has prayed for various other reliefs. The case of the Plaintiffs is that sometime in October 1980, the 1st Defendant approached the Plaintiff and applied for grant of financial assistance for the purpose of purchasing a truck. On 21st October 1980, the Plaintiff sanctioned term loan in the sum of Rs.1,97,000/- under the IDBI Refinance Scheme. The interest was at the rate of 18.35% per annum till the date of refinance from IDBI is obtained and thereafter at 11.85% from February 1981 against the hypothecation of the new truck valued at Rs.2,68,705/- with 25% margin. The 1st Defendant was granted facility of clearing the loan by 36 equal monthly instalments of Rs.5450/- and the last instalment of Rs.6250/-.

2. In consideration of the grant of loan of Rs.1,97,000/- the 1st Defendant executed a demand promissory note dated 21st October 1980 for the sum of Rs.1,97,000/- by which the 1st Defendant agreed to repay the loan amount with interest as agreed. The 1st Defendant also executed a deed of hypothecation dated 21st October 1980 by which the truck was hypothecated in favour of the Plaintiff by way of security for repayment of loan with interest thereon. The 2nd and 3rd Defendants executed a deed of guarantee dated 21st October 1980 by which they agreed to guarantee the repayment of the amount due and payable by the 1st

Defendant together with interest, costs, charges and expenses. According to the case of the Plaintiff, the 1st Defendant availed of the loan. The 1st Defendant executed a letter of acknowledgement of debt dated 20th October 1983. The 1st Defendant executed a revival letter Form III dated 19th January 1986 and acknowledged that the said sum of Rs.1,97,000/- was secured under the demand promissory note. As the Defendant failed and neglected to pay the monthly instalments, by demand notice dated 26th April 1994 the Plaintiff called upon the Defendants to pay the amount due and payable under the loan facility. According to the case of the Plaintiff as on 20th December 1985, a sum of Rs.1,37,713.45 was due and payable by the 1st Defendant. As compliance was not made with the notice by the Defendants, the present suit has been filed.

3. The suit was contested by the 1st Defendant by filing written statement. The 1st Defendant did not dispute that financial assistance was granted by the Plaintiff and that he hypothecated the truck in favour of the Plaintiff by way of security. It is contended that the signatures of the 1st Defendant were taken on blank documents, writings and papers without explaining the contents thereof to him. It is contended that the 1st Defendant is an illiterate person and therefore, does not know English. It is stated that on 28th August

1981 the hypothecated truck met with an accident and the cleaner died in the accident. It is stated that the 1st Defendant lodged a claim with the Insurance Company and the Insurance Company paid a sum of Rs.1,15,000/- to the Plaintiff. It is stated that the 1st Defendant deposited the said cheque of Rs.1,15,000/- with the Plaintiff with specific understanding to adjust the said amount against the outstanding loan. It is alleged that the 1st Defendant made various payments aggregating to Rs.91,085.25 and thus excessive payment of Rs.43,266/- has been made by the 1st Defendant.

4. Issues were settled on 24th February 2006, which reads thus:

- (1) Whether the plaintiffs prove that sum of Rs.1,46,171.89 is due and payable by the Defendants to the Plaintiffs with interest at 18.35% as per the statement of account being Exh.G and particulars of claim being Exh.H to the plaintiff?
- (2) Whether the Plaintiffs prove that the Defendants have executed the documents being Exh.A to Exh.E to the plaintiff as and by way of security for the repayment of the aforesaid amount?

- (3) Whether the Plaintiffs prove that the truck bearing No.MWT-2278 is hypothecated or charged and/or pledged by the Defendant No.1 in favour of the Plaintiffs as and by way of security for repayment of the amount mentioned in Exh.G and Exh.H to the plaint?
- (4) Whether the Defendants prove that they have paid excess amount to the Plaintiffs and are liable for refund of an amount paid with interest?
- (5) Whether the Defendants Nos.12 and 3 prove that they have executed guarantee for the due repayment of loan amount due to the Plaintiffs under hypothecated vehicle No.MWT 2278?
- (6) Whether the Defendants prove that they have not admitted and acknowledged an amount of Rs.1,46,177.89 secured under the Promossory Note dated 20.12.1985?
- (7) Whether the Defendants prove that the suit is barred by the law of limitation?
- (8) Reliefs, if any?

5. The Plaintiff filed affidavit in lieu of

evidence of Shri K.Parthasarathy, Chief Manager. The Plaintiff also produced on record original documents along with a list. The examination-in-chief of the said witness Shri K.Parthasarathy was recorded on 16th August 2007. None appeared for the Defendants. Therefore, on that day cross-examination of the said witness was closed. As the Counsel for the Plaintiff made a statement that the Plaintiff does not desire to lead any further evidence, the suit was adjourned till today for recording evidence of the Defendant and for hearing of arguments. Today none appears for the Defendants and therefore, I have heard the argument of the learned Counsel for the Plaintiff.

6. The Plaintiff has produced and proved demand promissory note dated 21st October 1980 (Exh.P-1) executed by the 1st Defendant by which he agreed to pay Rs.1,97,000/- with interest. The Deed of hypothecation dated 21st October 1980 is also produced and proved by the Plaintiff. The Deed of hypothecation has been marked as Exh.P-2. The said deed of hypothecation establishes that the truck, more particularly described in the schedule to the said deed of hypothecation was hypothecated with the Plaintiff-bank by way of security for repayment of the loan amount. Letters of acknowledgement dated 20th October 1983 (Exh.P-4) and 19th January 1986 (Exh.P-5) have been duly proved by the

Plaintiff.

7. A deed of guarantee dated 21st October 1980 is also produced and proved by the Plaintiff. Shri K.Parthasarathy, the witness examined by the Plaintiff has identified signatures of the Defendants on the said document. A copy of the demand notice dated 26th April 1994 issued by the Advocate for the Plaintiffs is also placed on record. An extract of the loan account of the 1st Defendant is produced and proved and the same has been marked as Exh,P-6. A copy of an extract of the loan account of the 1st Defendant has also been annexed to the plaint.

8. It must be stated here that the 1st Defendant has not disputed that the Plaintiff granted loan for purchase of a truck against hypothecation of the truck. By way of answer to the said claim, the contention of the 1st Defendant is that a sum of Rs.1,15,000/- received from the Insurance company was paid to the Plaintiff and the Plaintiff was to adjust the said amount against repayment of loan. It is also contended that the 1st Defendant has paid various amounts from 29th January 1982 till December 1985 aggregating to Rs.91,085.25. The contention is that if the sum of Rs.1,15,000/- allegedly received from the Insurance Company and the sum of Rs.91,085.25 are taken into

consideration, an excess payment of Rs.43,266/- has been made by the 1st Defendant.

9. The burden was on the 1st Defendant to prove that the sum of Rs.1,15,000/- was paid to the Plaintiff and the same was paid on the understanding that the said amount would be adjusted against the suit claim. The 1st Defendant has not led any evidence to substantiate the said case. The 1st Defendant has not even cross-examined the only witness of the Plaintiff. Thus there is no evidence on record to show that a sum of Rs.1,15,000/- was received by the Plaintiff as contended by the 1st Defendant. In the written statement and in particular clause (d) of paragraph 5 thereof, the 1st Defendant has given particulars of various payment smade by him to the Plaintiff from 29th January 1982 till the end of December 1985. A perusal of the extract of account of the Defendant produced by the Plaintiff shows that the Plaintiff has given credit to all the amounts set out in clause (d) on page 5 of the written statement. In any event the burden to prove that excess payment of Rs.43,266/- was made by the 1st Defendant to the plaintiff was on the 1st Defendant. As stated earlier, the 1st Defendant has not led any evidecne and has not cross-examined the only witness examined by the Plaintiff. The 2nd and 3rd Defendants have not contested the suit. The 2nd and 3rd Defendants are the

guarantors. The deed of guarantee dated 21st October 1980 (Exh.P-3) and in particular clause 2 thereof records that the guarantee shall be for an amount not exceeding the sum of Rs.1,97,000/- together with interest and charges thereon. The execution of the deed of guarantee has been duly proved by the aforesaid witness of the Plaintiff. Considering the aforesaid discussion the issue Nos.1, 2 and 3 will have to be answered in the affirmative and the issues Nos.4 to 6 will have to be answered in the negative.

10. Another contention raised by the Defendants is as regards bar of limitation. The loan was disbursed on 21st October 1980. On 20th October 1983 the 1st Defendant has admitted the claim by way of a letter of acknowledgement (Exh.P-4). There is one more letter of acknowledgement dated 19th January 1986 (Exh.P-5) whereby the 1st Defendant has admitted the claim. The suit has been lodged on 15th October 1986. Therefore, considering the documents at Exh.P-4 and P-5, the suit will have to be taken as filed within limitation. Therefore, issue No.7 will have to be answered in favour of the Plaintiff.

11. In prayer clause (a), the Plaintiff has sought further interest at the rate of 11.85% per annum or at the revised rate of interest as declared by the Reserve

Bank of India from time to time. Considering the facts and circumstances of the case, the interest at the rate of 11.85% per annum will have to be granted on the sum of Rs.1,37,713.45 from the date of institution of the suit till realisation. The learned Counsel for the Plaintiff has stated that the Plaintiff is pressing for a decree only in terms of prayer clauses (a) and (b).

12. Hence the following order is passed:

- (i) The Defendants Nos.1 to 3 are ordered and decreed to jointly and severally pay to the Plaintiff a sum of Rs.1,46,171.89 ps. with interest on the sum of Rs.1,37,713.45 at the rate of 11.85% p.a. from the date of the suit till realisation.
- (ii) The Defendants Nos.1 to 3 are ordered and decreed and decreed to pay costs of the suit to the Plaintiff.
- (iii) Certified copy is expedited.

Judge.

